



CHAMBER OF SHIPPING
OF AMERICA

DEPT. OF TRANSPORTATION
FACILITY

103 JUL 30 PM 3:23

249224

July 30, 2003

USCG-2003-14792-66
USCG-2003-14733-15
USCG-2003-14749-99
USCG-2003-14732-39

VIA FAX: 202.493.2251

Boat Management Facility

Pocket Numbers:

[USCG-2003-14792] National Maritime Security Initiatives
[USCG-2003-14733] Area Maritime Security
[USCG-2003-14749] Vessel Security
[USCG-2003-14732] Facility Security

US Department of Transportation

Room PL-401

400 Seventh Street, SW

Washington, DC 20590-0001

Re: Implementation of National Maritime Security Initiatives [USCG-2003-14792],
Area Maritime Security [USCG-2003-14733], Vessel Security [USCG-2003-14749],
Facility Security [USCG-2003-14732]; Temporary Interim Rules with Request for
Comments and Notice of Meeting (Federal Register, Tuesday, July 1, 2003, pgs.
39340 - 39338).

Dear Sir or Madam:

The Chamber of Shipping of America (CSA) appreciates the opportunity to respond to the USCG's temporary interim rules with request for comments and notice of meeting on Implementation of National Maritime Security Initiatives and Area, Vessel and Facility Security as published in the above referenced document.

The Chamber of Shipping of America represents 23 U.S. based companies that own, operate or charter oceangoing tankers, container ships, dry bulk carriers, and other merchant vessels engaged in both the domestic and international trades and registered under both US and foreign flags. The Chamber also represents other entities that maintain a commercial interest in the operation of these oceangoing vessels.

CSA has been involved in the process leading up to the publication of these rules at both the international and domestic levels. In November 2001, we supported the US Coast

Guard when they approached the International Maritime Organization to develop amendments to the Safety of Life at Sea Convention (SOLAS) covering maritime security. In an unprecedented short period of time, IMO scheduled a meeting for February 2002 to begin work. In advance of the meeting CSA met with the USCG to identify appropriate security initiatives and assisted them with our knowledge of the industry. We attended the IMO meeting as a member of the US delegation and also attended the following two preparatory meetings held in May and September 2002. We also attended the Diplomatic Conference held in December 2002 where amendments to SOLAS were adopted unanimously by the international community. These amendments were the result of a great amount of work and leadership by the Coast Guard.

General Comments relative to all temporary interim rules

- (1) We are pleased to note that the temporary interim rules published on July 1, 2003 as referenced above closely resemble, in large part, the requirements in the adopted SOLAS amendments and the International Ship and Port Facility Security Code (ISPS). Such alignment of international and national requirements is critical to the creation of a globally consistent maritime security regime which adequately protects the marine transportation system without impeding the free flow of trade worldwide. Furthermore, such international consistency is very important in assuring that the weakest link in the global maritime transportation system meets an acceptable level of protection. CSA also strongly supports the position of the USCG that the US recognize valid International Ship Security Certificates as evidence of compliance with and implementation of the relevant provisions of SOLAS and the ISPS Code. In our view, recognition of flag state administration issuances of the ISSC taken in conjunction with appropriate port state control boardings, will release the USCG from conducting a duplicative paper exercise and permit focus on implementation of the SOLAS and ISPS Code security requirements in practice aboard vessels.
- (2) CSA recognizes the importance of a global maritime security program and the role of the USCG in assuring implementation of such a program in the United States. However, CSA is concerned with the safety mission of the USCG. The Coast Guard fulfills an important and vital role in keeping our waterways safe and environmentally secure. While these regulations focus on security, we would like to reemphasize the point that the safety and environmentally sound operations of our industry and the marine transportation system as a whole should not be compromised as we expend additional resources on security missions. . In today's world of limited manpower, we believe the USCG should consider the use of responsible and knowledgeable personnel meeting the expected criteria which will later be included in § 101.500, Procedures for Authorizing a Recognized Security Organization (RSO) and which are underdevelopment by the International Maritime Organization. CSA has gone on record and continues to support the preeminent role of the USCG in the review and approval of vessel security plans; however, use of these responsible and knowledgeable entities on a contract basis to support the USCG's maritime

security mission and activities will mitigate the expected manpower drain on critical USCG resources, provide the highest likelihood of success in meeting the challenging timelines contained in these interim rules, and facilitate the transition to formal recognition of RSO's should the US decide to employ this mechanism for the future.

- (3) The interoperability of the various security plans (national, area, port, facility and vessel) is paramount. Without a coordinated effort to assure this interoperability, the production of the various plans will be no more than a paper exercise with little real security benefit. As such, we urge the USCG, in reviewing the various plans, to ensure adequate provisions within these plans to ensure this coordinated approach to the implementation of the national maritime security system.
- (4) CSA also has concerns relative to the potential liability of shipowners and/or facility owners in two specific maritime security situations. Although we recognize these issues are beyond the purview of these rulemakings, we would urge the USCG to consider these issues and work with industry and Congress to adequately resolve these concerns. The first concern relates to the potential liability in the situation where a vessel or facility has conformed with the requirements of these rules and directives published relative to MARSEC levels and in spite of these efforts, a maritime security incident occurs. We are concerned that the very occurrence of an incident could result in second-guessing and recriminations about protective measures that could have been taken. While the industry is committed to meeting all legal requirements of these regulations, such compliance cannot absolutely guarantee prevention of a maritime security incident. CSA has registered these concerns in the request for comments on maritime security published earlier this year; however, no mention of these concerns are addressed in the preamble to these interim rules. We would respectfully request clarification on this issue in the final rule to be published later this year.

Likewise, CSA is concerned with the liability for oil spills resulting from a maritime security incident. The Oil Pollution Act of 1990 (OPA 90) stipulates that an owner is liable for an oil spill regardless of cause, subject to three defenses explicitly stipulated in the act – acts of God, acts of war or acts of a third party which could not have been foreseen. Even if caused by a terrorist act, an owner is obligated, under the Certificate of Financial Responsibility regulations, to initiate the oil spill response plan which entails a large expense. He can then, after the fact, begin a process to claim his expenditures from the National Pollution Fund Center, although he must prove that the terrorist act was the act of a third party that could not have been foreseen. CSA has met several times with the USCG on this situation and will have further meetings. We remain firmly of the opinion that a terrorist act is something not envisioned by the Congress when OPA 90 was drafted and the strict liability scheme should not be used in such circumstances. We believe there are administrative procedures that can address this concern and urge the USCG to work with industry in pursuing further these procedures.

- (5) Finally, we wish to record our appreciation to the USCG for their timely production of the three Navigation and Vessel Inspection Circulars (NVICs) addressing port, vessel and facility security which were published in the 4th quarter of 2002. At a time when the IMO proceedings were moving forward, the production of these NVICs were critical in enabling our Members to initiate their security reviews and start the development their assessments and security plans.

Comments Specific to Implementation of National Maritime Security Initiatives
USCG-2003-14792L

- (6) Preamble, Coordination With the SOLAS Requirements (pgs. 39242 – 39243). As expected, the preamble states that the "Coast Guard considers ISPS Code, part B, an essential element to ensure full and effective compliance with the intent of the MTSA" and further states that the "flag administration may also choose to provide a document or endorsement to the ISSC to verify that the security plan was based upon full compliance with the relevant provisions of the ISPS Code, part B, to assist Coast Guard Port State Control Officers". CSA strongly urges the USCG to include appropriate sample text within the body of the vessel security regulations which would meet these expectations and provide the necessary guidance to flag state administrations in producing such documents or endorsements to the ISSC. Text similar to that proposed to the most recent IMO Maritime Safety Committee (MSC) meeting, which although not accepted for incorporation into the ISSC, may be the appropriate text for use by flag state administration endorsements and would be most helpful for foreign flag vessels calling in US ports subject to port state control inspections.

- (7) Preamble, Discussion of Comments to Maritime Security Public Meetings (pgs. 39251). Based on comments received in response to the December 30, 2002 request for comments, the USCG notes their continued work with all other federal agencies to ensure logical and unconflicting alignment of the maritime security requirements with the other federal agencies and States. Based on documented experience by a number of our Members, we would urge the USCG to assure that all federal agency representatives, including those with responsibilities for customs and immigrations, are aware of the requirement that vessel security programs, many of which are already in place, require visitors to the vessels to produce positive and verifiable forms of identification and, in some cases, to sign the visitors' log. Over the past several months, our Members have encountered federal agency personnel with customs and immigration duties who have refused to show vessel personnel any photo identification or provide their names to ship's security personnel, instead only showing their badges. We believe this to be in conflict with the requirements for access control and visitor identification contained in these interim rules and would respectfully request the USCG to make their federal agency colleagues aware that these practices are unacceptable in that vessel noncompliance with the security regulations is being forced by the actions of federal agents. We have also been advised by our

Member companies of warning notices from various sources concerning the risks associated with persons attempting to board vessels in an official capacity using stolen or counterfeited uniforms and credentials. This risk further highlights the need for legitimate government officials to provide positive verifiable identification cards (with name, agency and photograph) and badges to vessel security personnel and to appreciate the need to cooperate with vessel personnel in ensuring the security of the marine transportation system.

- (8) Preamble, Discussion of Comments to Maritime Security Public Meetings (pg. 39252). The USCG notes that the vessel and facility interim rules address coordination of ingress/egress for vessel personnel and visitors to the vessel and further states that the vessel and facility operators are "encouraged" to coordinate shore leave for mariners, as well as procedures for access through the facility by visitors. CSA appreciates these statements but would respectfully request the Coast Guard to go further than "encouraging" such coordination. Such coordination as part of the vessel and facility security plans which will be subject to USCG approval should "require" such coordination and plans which fail to adequately and reasonably address such provisions should not be approved until this scenario is adequately addressed.
- (9) Preamble, Discussion of Comments to Maritime Security Public Meetings (pg.39252 - 39253). Relative to training of security personnel within the marine transportation system, CSA appreciates the efforts in providing training criteria for use in training security personnel. CSA also agrees that, at least in the first iteration, company self-certification is not only desirable but necessary in order to meet the challenging deadlines contained in the SOLAS Amendments, ISPS Code and the MTSA. However, relative to these criteria, CSA remains strongly of the opinion that these various functional requirements are similar to the traditional function of seafarers which have historically included the maintaining of proper lookouts, controlling access to/from and on the vessel, sharing of operational information at watch changes, communication with local port and facility officials and coordination of ship and shore operations. In reviewing the training criteria and some training courses which are now being offered, we have noted that some envision the seafarer going beyond these traditional duties. CSA maintains very strongly that while detection of a perceived threat and notification of appropriate law enforcement authorities is well within the duties of the crew, taking action against that perceived threat is not the duty of the crew. For example, while the use of armed patrols hired by the vessel owner are mandated by existing INS requirements, the owner/operator's action in complying with a government agency's instruction does not legally empower these agents of the owner/operator to use the level of force inherent in the actions of law enforcement officers. As another example, provisions elsewhere in the interim rules may require the vessel and/or facility owner to initiate offshore patrols while not legally empowering these patrols to restrict movement on the navigable waterways of the US. Training criteria which enhance a crew's detection capabilities are desirable; those that suggest performance of traditional law

enforcement functions are not only unnecessary but imprudent in the absence of legal empowerment of these private entities consistent with that provided law enforcement officials.

- (10) Preamble, Federalism (pgs. 39277 -39278). CSA strongly endorses the federalism analysis contained in the interim final rules. The marine transportation system is global in nature and it is critical that there is one uniform, national standard to which vessels and facilities must comply. The existing of conflicting or supplementary state requirements would frustrate the free flow of commerce to, from and within the national marine transportation system. Such facilitation is promoted through the application of a single national system which, not coincidentally, corresponds in large part to international requirements.
- (11) § 101.105, Definitions (pg. 39281). The current definition of "Vessel Security Officer (VSO)" does not take into account the situation where the Master may, in fact, be the designated VSO. CSA would recommend the addition of text to the existing definition (additions shown in *italic*) as follows: "Vessel Security Officer (VSO) means the person onboard the vessel, *which may be the Master or other crew member which shall be accountable to the Master*, designated by the Company as responsible for security of the vessel, including implementation and maintenance of the Vessel Security Plan, and for liaison with the Facility Security Officer and the vessel's Company Security Officer." Such revision will clarify industry questions and USCG responses to these questions which confirm that the vessel's Master may in fact, be the designated VSO.
- (12) § 101.300 and § 101.405, Preparedness communications and Maritime Security Directives. The USCG is responsible for establishing the MARSEC level in a particular port area. The rule notes that they will advise the industry of any changes to the levels by a local Broadcast Notice of Mariners, a Maritime Security Directive, or as detailed in the area plan. Of these options, the first has the defect of the USCG not knowing that the change notice has been received. The second has the problem in that the existence of a Directive is published in the Federal Register without any particulars which then requires a company, facility and/or vessel security officer to go to the COTP and request a copy of the Directive after he proves that he has a "need to know" the information. Even assuming that he can prove this without any knowledge of the circumstance surrounding the creation of the Directive, it seems to be a time consuming exercise given that something has given rise to this accelerated concern and that whatever has justified such concern may well be on a time line that does not permit such a process. CSA believes the only acceptable process from a timing standpoint is an email/phone/fax list notification process that can be centrally created by the USCG office having authority in a particular jurisdiction. Such a database would be created from contact personnel information required in vessel and facility plans. Such a database utilizing all existing port community contacts, including agents and maritime exchanges, would permit the more timely and

necessary communication of threat information to the port and vessel community. CSA also urges the USCG to develop notification systems which assure advance notice of area security requirements and information (including MARSEC levels) to vessels prior to their arrival in port.

- (13) § 101.515, Personal Identification. Please see comments in paragraph (7) above and the need to ensure that all parties, public and private, comply with the requirements contained in this section including bearer's full name and photograph. CSA also believes that compliance with these requirements are paramount in assisting vessels and facilities to meet the requirements of § 104.200 and § 105.200, respectively which require vessels and facilities to ensure the coordination of shore leave for vessel personnel or crew change-out. Security plans which do not address this issue with appropriate programs should not be approved.

Comments specific to Area Maritime Security [USCG-2003-14733].

- (14) General. Please see the comments in paragraph (3) above addressing the need for interoperability of the various plans required under these interim rules. CSA strongly believes that the expertise assembled by the COTP in the Area Maritime Security Committee will be of valuable assistance in ensuring this interoperability among the area, facility and vessel plans.
- (15) § 103.305, Composition of an Area Maritime Security (AMS) Committee. The current wording of this section states that AMS members "may" be selected from seven specific areas of expertise. CSA strongly believes that adequate expertise to meet the responsibilities of the AMS Committee as outlined in § 103.310 mandates representation on the committee from representatives from all seven of the listed areas of expertise and as such, recommends that the language of this section be changed from "may" to "must be selected from" the seven listed areas of expertise. Creating such a broad based level of expertise within the AMS Committee is, in our opinion, critical to ensuring the necessary level of interoperability among the various plans in the marine transportation system as well as assuring all local characteristics of a given area, port, its facilities and the vessels which call in that port are taken into account during the risk assessment and plan development and implementation phases.
- (16) § 103.310, Responsibilities of the Area Maritime Security (AMS) Committee. CSA strongly supports the use of the AMS Committee as a critical link in developing and implementing adequate and timely communications systems within the area to all port stakeholders.

Comments specific to Vessel Security [USCG-2003-14749].

- (17) Preamble, Cost Assessment. While CSA staff does not have the necessary expertise to validate or challenge findings in the cost assessment, we do note that the Preamble contains a cost estimate of \$10 million for international ships calling in US ports, which we believe to be significantly understated. The same parameters used to develop the costs for the US flag ships subject to SOLAS should be extrapolated and applied to the foreign flag ships calling in US ports adjusted for the time these ships spend in US waters. This will provide a more realistic economic impacts analysis for these vessels in meeting the US requirements while in US waters.
- (18) §104.145, Maritime Security (MARSEC) Directive. Please see our comments above in paragraph (12) which address the need to establish adequate and timely communications systems. Without such a system which should provide readily accessible information concerning MARSEC levels and provisions of issued directives, ship owners will find themselves in the legally impossible position of compliance with instructions to which they have no access.
- (19) §104.225, Security Training for all other vessel personnel. CSA believes that the existing section should be deleted and replaced with text as follows: "All other vessel personnel, including contractors, whether part-time, full-time, temporary, or permanent, must have training or equivalent job experience consistent with requirements established in the vessel security plan. Such training or equivalent job experience may include (a) relevant provisions of the Vessel Security Plan (VSP); (b) the meaning and the consequential requirements of the different Maritime Security (MARSEC) Levels, including emergency procedures and contingency plans; (c) recognition and detection of dangerous substances and devices; (d) recognition of characteristics and behavioral patterns of persons who are likely to threaten security; and (e) techniques used to circumvent security measures." The purpose of this proposal is to ensure appropriate text which addresses the myriad of contractor arrangements with vessels, ranging from a single, short duration visit for repair of a particular piece of equipment to that scenario where riding crews may board the ship for a period of weeks in preparation for shipyard. Requiring such appropriate documentation within the vessel security plan will ensure that individuals are provided with sufficient training (or escort by ship's crew) without requiring the provision of security sensitive information or other information that the temporary "visitor" has no need to know, providing adequate provisions are made in the VSP e.g. escort while onboard.
- (20) § 104.230, Drill and exercise requirements. CSA's Members support the proposed drill and exercise requirements in ensuring continued implementation of the vessel security plan and the capabilities of the crew. However, we wish to emphasize certain points identified in our analysis of the interim rule and request confirmation of this analysis. First, security drills may be integrated with other

non-security drills. Second, security drills will generally be initiated by the Master and/or the vessel security officer and need not (but may) involve participation by the company security officer (CSO), except as regards the CSO's general responsibility to ensure that the vessel security plan is maintained and implemented and the vessel security activities are audited periodically e.g. ensuring drills are held every three months through audit or review of vessel records and/or reports. Third, while we support the need to drill new crewmembers within 7 days of embarkation, we believe the 25% crew change redrill requirement should apply only to those crewmembers who have not participated in a drill within the prior 3 months, providing the drill was conducted on a vessel with a substantially similar plan and responsibilities. As an example, a company which operates a fleet of similar class ships that employ marines consistently throughout that fleet, should not be subject to the 25% crew change redrill requirements when embarking crewmembers have been drilled on another of its vessels within the previous 3 month period.

(21) § 104.235, Vessel recordkeeping requirements. The USCG is strongly urged to incorporate flexibility in its port state control program during the early implementation phases relative to recordkeeping. As an example of this need for flexibility, it is important to note that it may take a vessel on extended transoceanic voyages a number of months to complete ten (10) vessel/facility interfaces which require execution of a Declaration of Security (DOS), and until such time, that vessel would not have the requisite "last 10 DOSs" onboard. While we expect the USCG to have already recognized this temporary aberration relative to early implementation of the recordkeeping requirements, we wish to formally go on record with this issue to prevent a vessel from being unduly detained when its voyage history taken in conjunction with the 1 July 2004 implementation date, clearly shows the impossibility of producing the last ten (10) DOSs.

(22) § 104.240, Maritime Security (MARSEC) Level coordination and implementation. CSA is concerned about requirements for vessels at MARSEC Level 3 which may include use of waterborne security patrols, use of armed security personnel and screening of the vessel for the presence of dangerous substances and devices underwater. In each of these instances, we are being held responsible for performing functions that we either have no authority to perform and/or do not have the expertise to assess the competence of those we are being asked to oversee in performing the function. Armed patrols are questionable as there is no federal recognition of who may be armed and what their background and training should be. Our experience with armed personnel based on our involvement with requirements from the Immigration and Naturalization Service, is that the armed personnel meet state or local requirements. This has led to the assignment of armed personnel aboard oil and chemical tankers who had no knowledge or appreciation of the dangers associated with these types of ships. We also question the authority of the armed guard to use force and the liability of the vessel owner/operator should the guard do so. The rule also holds the vessel

owner/operator responsible for patrolling the water with small boats. We do not believe that we have any authority to restrict movement on the navigable waters of the US. Finally, we are being held responsible to have underwater screening of the ship's hull, an area of expertise in which we do not have the ability to assess the qualifications of personnel who are to search for some type of security problem involving the underwater hull. In each of the above circumstances, we believe the federal government should be involved in their traditional law enforcement mode once a threat has been identified as would be the case at a designated MARSPEC level 3.

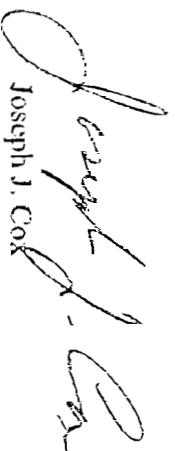
Comments specific to Facility Security USCG-2003-147321

(23) § 105.200, owner or operator (responsibilities). CSA strongly supports the provision of subparagraph (7) of this section which requires the facility owner or operator to "ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors to the vessel (including representatives of seafarers' welfare and labor organizations), with vessel operators in advance of a vessel's arrival". CSA also suggests that both vessel and facility security plans should incorporate appropriate provisions within the plan to facilitate the movement of ship's crew on and off the vessel while berthed for purposes of routine shore leave and crew changes and further urges the USCG to adopt the position that plans without such provisions should not be approved until acceptable provisions are included in the plan and fully implemented on vessels and within facilities.

(24) § 105.215, Security Training for all other facility personnel. Please see our comments in paragraph (19). Similar changes should be made to the text of this section for the same reasons outlined in that paragraph.

The Chamber of Shipping of America appreciates the opportunity to provide these comments to the docket and would be pleased to discuss these and any other maritime security related issues upon request.

Sincerely,


Joseph J. Cox
President